

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 23, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF: 05OD-245

OAHU

Issuance of a Direct Lease to the University of Hawaii, College of Tropical Agriculture and Human Resources, Fee Simple Conveyance of State Land to the Department of Hawaiian Home Lands and Amend Prior Board Action of September 25, 1998 (Agenda Item D-17), and May 9, 1997 (Agenda Item D-26), Koolaupoko, Waimanalo, Oahu, Tax Map Key: (1) 4 -1-08: 5, 79 and 80, and (1) 4-1-26: 4

APPLICANTS:

University of Hawaii, College of Tropical Agriculture and Human Resources, by its Board of Regents (UH) and the Department of Hawaiian Home Lands, by its Hawaiian Homes Commission (DHHL).

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government (Crown) Lands of Waimanalo situated at Koolaupoko, Waimanalo, Oahu, identified by Tax Map Keys: (1) 4-1-08: 5, 79 and 80 and (1) 4-1-26: 4, as shown on the attached map labeled Exhibit A.

AREA:

Former Meadow Gold Dairies, Inc. (MGD) site (1) 4-1-08: 5 and 80, and (1) 4-1-26: 4; area of 335 acres, more or less (283 acres - lease to UH and 52 acres - conveyance to DHHL).

General Lease No. S-5376 (GL No. S-5376) (1) 4-1-08: 79; area of 52 acres, more or less (conveyance to DHHL).

Remnant (1) 4-1-08: adjacent to 79; area of 0.226 acres, more or less (conveyance to DHHL).

ZONING:

State Land Use District: Agricultural
City and County of Honolulu CZO: AG-1, restricted agricultural and AG-2, general agricultural

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

The former MGD site containing 335 acres, more or less, is vacant and unencumbered.

GL No. S-5376 to Ronald and Shirley Wong c/o Dominic and Shawn Kadooka encumbers 52 acres, more or less, for a term of 35 years, expiring on November 30, 2029. Last rental reopening occurred on December 1, 2004, the next rental reopening is scheduled for December 1, 2014. The leased area is used for cultivating corn (see remarks).

The Remnant containing 0.226 acres was inadvertently utilized by DHHL (see remarks) to provide roadway access to its adjacent subdivision.

CHARACTER OF USE:

UH Portion: Agricultural/Bioremediation research and other related University of Hawaii, College of Tropical Agricultural and Human Resources purposes.

DHHL Portion: Fee simple conveyance.

LEASE TERM (UH):

65 years

LEASE COMMENCEMENT DATE (UH):

The first day of the month to be determined by the Chairperson.

ANNUAL RENT (UH):

\$1.00 for the entire term.

METHOD OF PAYMENT (UH):

One time payment in advance.

RENTAL REOPENINGS (UH):

None

PERFORMANCE BOND (UH):

Waive

ENCUMBRANCES:

A ten foot wide easement for the Maunawili Ditch encumbers TMK: (1) 4-1-08: Portions 5 and 80.

Future encumbrances include a Board of Water Supply (BWS) proposed well and reservoir over

TMK: (1) 4-1-08: 5 and water pipeline and access over TMK: (1) 4-1-08: 5, 79 and 80 and (1) 4-1-26: 4, which are currently covered under a right-of-entry issued to BWS.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

UH portion – UH has begun the process of selecting a consultant to prepare an environmental assessment covering its proposed use for the 283-acre portion of the former MGD site.

DHHL portion – This request before the Board to transfer the ownership of State land is an administrative action and does not constitute a use of State land or funds, and therefore, is exempt from the provisions of Chapter 343, Hawaii Revised Statutes, as amended. Inasmuch as the Chapter 343 environmental requirements apply to the Applicant's use of the land, the Applicant shall be responsible for compliance with Chapter 343, Hawaii Revised Statutes, as amended.

DCCA VERIFICATION:

Not applicable as government agencies are not required to register with DCCA.

APPLICANTS REQUIREMENTS:

Applicants shall be required to:

- 1) Process and obtain subdivision at Applicants' own cost.
- 2) Provide survey maps and descriptions according to State DAGS standards at Applicants' own cost.

REMARKS:

For nearly forty years the subject Waimanalo site was used for dairy purposes. Beginning in 1967, General Lease No. S-4101 covering 196 acres (TMK: (1) 4-1-08: 80 and (1) 4-1-26: 4) was issued to L.W. Campos Ranch, Ltd., for dairy purposes.

Then, by way of assignment in 1969, Foremost Dairies Hawaii, Ltd. (Foremost) acquired the leased premises. Also, revocable permits covering 139 acres (TMK: (1) 4-1-08: 5) for pasture purposes were issued to Foremost to support its expansion of the dairy operation.

On September 4, 1997, the Southern Food Group, L.P. (Southern) dba Meadow Gold Dairies, Inc., by assignment, acquired the premises demised under General Lease No. S-4101 and the pasture permit areas. On July 31, 2002, Southern, in downsizing the dairy operation, canceled its pasture permits. Subsequently, Southern decided to discontinue its Waimanalo dairy operation and on August 12, 2005, General Lease No. S-4101 was canceled.

The 283-acre portion (TMK: (1) 4-1-08: Portions 5 and 80 and (1) 4-1-26: 4) of the former MGD site being requested by UH is located adjacent to its 127-acre Waimanalo Agricultural Experimental Station set aside to UH by Governor's Executive Order No. 3786.

A direct lease of the 283 acres to UH is permissible under Section 171-95 (a)(2), Hawaii Revised Statutes, as amended, which states, "(a) Notwithstanding any limitations to the contrary, the board of land and natural resources may, without public auction: (2) Lease to the governments,

agencies, public utilities and renewable energy producers public lands for terms up to, but not in excess of sixty-five years at such rental and on such other terms and conditions as the board may determine"

The 52-acre portion (TMK: (1) 4-1-08: Portion 80) of the former MGD site being requested by DHHL will help satisfy the high volume of demand by its native Hawaiian beneficiaries for residential homesteads in the Waimanalo area. Over 10% (840+) of its Oahu applicants are waiting for homesteads in Waimanalo, more than for any other area in the State.

Also, DHHL is requesting the fee simple title to the remaining 18 acres under the operation of GL No. S-5376 (TMK: (1) 4-1-08: 79) in addition to the 34 acres under its operation that the Board approved for conveyance to DHHL at its September 25, 1998 meeting, under agenda item D-17. Accordingly, amending the Board's prior action of September 25, 1998, to convey all 52 acres under the operation of GL No. S-5376 to DHHL would be in order. This conveyance, if approved by the Board, would be made subject to the remaining term and the conditions contained in GL No. S-5376.

DHHL estimates that it could economically develop between 150 and 200 residential lots on the 52 acres encumbered by GL No. S-5376 because it is the only area there with an existing drainage channel, and therefore, would not require major drainage improvements. The Board's approval to convey the 52-acre portion of the former MGD site to DHHL would allow DHHL to relocate the lessee's farming operation under GL No. S-5376 to the former MGD site. The lessee is receptive to such relocation because more of the 52-acre former MGD site can be cultivated compared to the 52 acres covered by GL No. S-5376.

The conveyance of the 0.226-acre Remnant to DHHL is more of a housekeeping matter that involves the withdrawal of 0.226 acres from the operation of GL No. S-5376 and the subsequent conveyance of the withdrawn area to DHHL. These actions became necessary when DHHL inadvertently used a 0.226-acre portion of GL No. S-5376 as a roadway access for its adjacent homestead subdivision during the subdivision's construction in March 1997.

The Board approved the withdrawal of the 0.226 acres from GL No. S-5376 and its conveyance to DHHL at its May 9, 1997, meeting, under agenda item D-26. The Board's approval was subject to consideration for the 0.226 acres of its fair market value, to be used against whatever outstanding obligations the Department of Land and Natural Resources has with DHHL, as determined by legal settlement. The withdrawal of the area from GL No. S-5376 was completed, however, the conveyance of the withdrawn area to DHHL was not.

All the conveyances to DHHL subject to this request would be applied, on an acre for acre basis, toward reducing the remaining balance of land the State owes DHHL, pursuant to a settlement agreement involving the conveyance of 16,518 acres of State land to DHHL. Accordingly, amending the Board's prior action of May 9, 1997, by deleting "Fair Market Value" from the description under Consideration would be in order.

Comments were solicited from the State Departments of Health, Hawaiian Home Lands, Agriculture, Land and Natural Resources, Divisions of Forestry and Wildlife, and Historic Preservation, the Office of Conservation and Coastal Lands, the Office of Hawaiian Affairs and the City and County of Honolulu Departments of Planning and Permitting, Facilities Maintenance and the Board of Water Supply. The following comments were received:

Office of Hawaiian Affairs: "OHA is supportive of the use of these lands by DHHL for housing..."

Historic Preservation: "According to available documents maintained at the State Historic Preservation Division (SHPD), an archaeological inventory survey, which identified historically significant sites including a portion of the Waimanalo Ditch System (SIHP NO. 50-80-15-4042), has been conducted on a portion of the subject property (Drolet and Sinoto, 1999, Archaeological Inventory Survey DWS Well III, SHPD Rpt. No. O-1856). However, the inventory survey focused on the specific area of potential effect (APE) associated with the proposed undertaking at the time, and was not a survey of the entire subject property. In addition, available records indicate that SIHP No. 50-80-15-1031, a traditional Hawaiian heiau (e.g. Pueo Heiau), is located on the subject property.

Therefore, in order to determine whether additional historically significant sites are present on the subject property, and the effect of the proposed undertaking on known historic sites, we believe that an archaeological inventory survey is warranted. The SHPD website contains a listing of local firms (<http://www.hawaii.gov/dlnr/hpd/archcon.htm>). We recommend archaeological consultants to contact us, or, alternatively, to prepare a basic inventory survey plan (which can be forwarded to us for review) before starting the work, in order to ensure that the study meets the requirements of HAR Chapter 13-276."

CCH, Department of Planning and Permitting: "We acknowledge the right of the Department of Hawaiian Home Lands (DHHL) to override county land use controls, which place the site mostly in the AG-1 Restricted Agricultural District and also partly in the AG-2 General Agricultural District. However, the subject site appears to be outside of the Rural Community Boundary, which acts to define and contain established communities in rural areas and to protect existing agricultural areas, and in an agricultural area, where the primary use is agriculture or uses directly supportive of agriculture, according to the Koolaupoko Sustainable Community Plan. Thus, we encourage DHHL to consider using the site to provide agricultural homesteads for those DHHL beneficiaries who are interested in such opportunities."

CCH, Department of Facilities Maintenance: "We have no objections."

Board of Water Supply: "We have no objections," provided the dispositions are "subject to BWS proposed Well and Reservoir over 4-1-08: 5 and water pipeline and access over 4-1-08: 5, 79 and 80 and 4-1-26: 4."

RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to the University of Hawaii, College of Tropical Agriculture and Human Resources covering the subject 283 acres, more or less, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - a. The standard terms and conditions of the most current general lease document form, as may be amended from time to time.
 - b. Review and approval by the Department of the Attorney General.
 - c. Compliance with Chapter 343 prior to use of the site by the University.

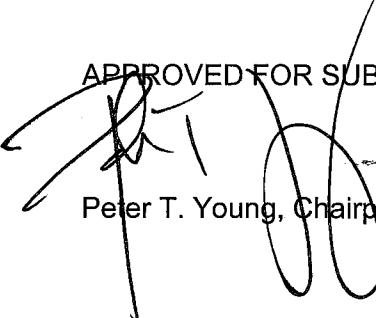
- d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the fee simple conveyance of the subject 104 acres, more or less, to DHHL, subject to the following:
 - a. The standard terms and conditions of the most current land patent grant document form, as may be amended from time to time.
 - b. The land shall be conveyed as is.
 - c. Authorize the application of the subject 104 acres of State-owned land upon its conveyance to DHHL as an acre for acre reduction of the remaining acreage to be conveyed to DHHL in partial satisfaction of the Settlement Agreement between the State and DHHL.
 - d. Review and approval by the Department of the Attorney General.
 - e. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Amend the Board's prior action of September 25, 1998, under agenda item D-17, to convey all 52 acres, more or less, under the operation of GL No. S-5376 to DHHL.
4. Amend the Board's prior action of May 9, 1997, under agenda item D-26, by deleting "Fair Market Value" from the description under Consideration.

Respectfully Submitted,



Gary Martin
Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

SUBJ: 3401
SOURCE: H.T.G. PLAT 2100
REF: NR 6 NR REVISED: March 1967

FOR MALIKAND, KOOLAUPOKO, DANU, I. H. (Formerly posts of 141-1-00, '93, 105-12 & 13)

Lease to UH
(TMK: (1) 4-1-08: 5 & Por. 80)

Convey to DHHL
(TMK: (1) 4-1-08: 79 & Por. 80)

Convey to DHHL (Remnant)
(TMK: (1) 4-1-08: Adjacent to 79)

SUBJECT TO CHANGE

PROPERTY OF THE U.S. GOVERNMENT
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 TAX MAP
 TOWN OF MOUNTAIN
 DIVISION
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 CONTAINING PARCELS
 204, 51, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913,

